

Planning Commission

Staff Report

March 17, 2022



Case No:	21-ZONE-0153
Project Name:	Breeze Bar
Location:	1247 S Shelby Street
Owner(s):	Breitenstein Properties LLC
Applicant:	Breitenstein Properties LLC
Jurisdiction:	Louisville Metro
Council District:	6- David James
Case Manager:	Julia Williams, AICP, Planning Supervisor

REQUEST(S)

- Change in zoning from C-1 to C-2
- Waiver from 10.2.10 to eliminate the 5' LBA and requirements along the south property line (22-WAIVER-0013)
- Detailed District Development plan

CASE SUMMARY/BACKGROUND

The applicant is proposing to change the zoning from C-1 to C-2 to permit the structure to be used as a tavern with a second story dwelling unit. The site plan proposes an outdoor patio and 2 parking spaces along the alley.

STAFF FINDING

Staff finds that the proposal meets the guidelines of the Comprehensive Plan and requirements of the Land Development Code as the development is for the re-use of an existing commercial structure for a commercial use. Pedestrian safety is improved with the removal of the existing driveway and the restoration of the curb along S. Shelby Street.

TECHNICAL REVIEW

The Smoketown/Shelby Park Neighborhood Plan (2002) applies to the proposal. No specific recommendations are indicated for this site.

Transportation Planning and MSD have preliminarily approved the proposal.

INTERESTED PARTY COMMENTS

None received.

STANDARD OF REVIEW FOR REZONING

Criteria for granting the proposed form district change/rezoning: *KRS Chapter 100.213*

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STAFF ANALYSIS FOR CHANGE IN ZONING

Following is staff's analysis of the proposed rezoning against the Guidelines and Policies of Plan 2040.

The site is located in the Traditional Neighborhood Form District

Traditional Neighborhood: This form is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings. Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are 50 to 120 years old, the Traditional Neighborhood Form may be used when establishing new developments and redevelopments. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) in the case of new developments or redevelopments using traditional building scales and site layouts, (c) the preservation of the existing or establishing a new grid pattern of streets and alleys, and (d) preservation of or creation of new public open spaces.

S Shelby Street is a transit corridor. Pedestrian use is promoted with the removal of the driveway to S Shelby St. as access is available through the alley. The zone change from C-1 to C-2 is located along a commercially zoned corridor. Changes to the site will be internal to the building and to rear of the site. The proposed zoning is not a non-residential expansion into a residential area. S Shelby Street is a transit corridor and the structure is located in an existing commercial corridor that has a mix of residential and non-residential uses.

All other agency comments should be addressed to demonstrate compliance with the remaining Guidelines and Policies of Plan 2040.

A checklist is attached to the end of this staff report with a more detailed analysis. The Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. The Louisville Metro Council has zoning authority over the property in question.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners since the encroachment involves an existing structure where there are no proposed changes to the exterior of the structure.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policy 9 calls to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements. Community Form Goal 1, Policy 10 calls to mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Residential uses that develop adjacent to agricultural land uses may be required to provide screening and buffering to protect both the farmer and homeowners. The proposal meets the guideline of the Comprehensive Plan since the encroachment involves an existing structure where there are no proposed changes to the exterior of the structure. A buffer and plantings are provided where parking is adjacent to the residential lot.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the encroachment involves an existing structure where there are no proposed changes to the exterior of the structure.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the encroachment involves an existing structure where there are no proposed changes to the exterior of the structure.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and AMENDMENT TO BINDING ELEMENTS

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There do not appear to be any environmental constraints or historic resources on the subject site. Trees will be planted on site to fulfill street tree and buffer requirements.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, and Metro Public Works has approved the preliminary development plan.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: There are no open space requirements pertinent to the current proposal.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties. The proposed parking lot will meet all required setbacks.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

REQUIRED ACTIONS:

- **RECOMMEND** that the Louisville Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from C-1 to C-2
- **APPROVE** or **DENY** the **Landscape Waiver**
- **APPROVE** or **DENY** the **Detailed District Development Plan**

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Planning Commission must determine if the proposal is in conformance with the Comprehensive Plan; OR the existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR if there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

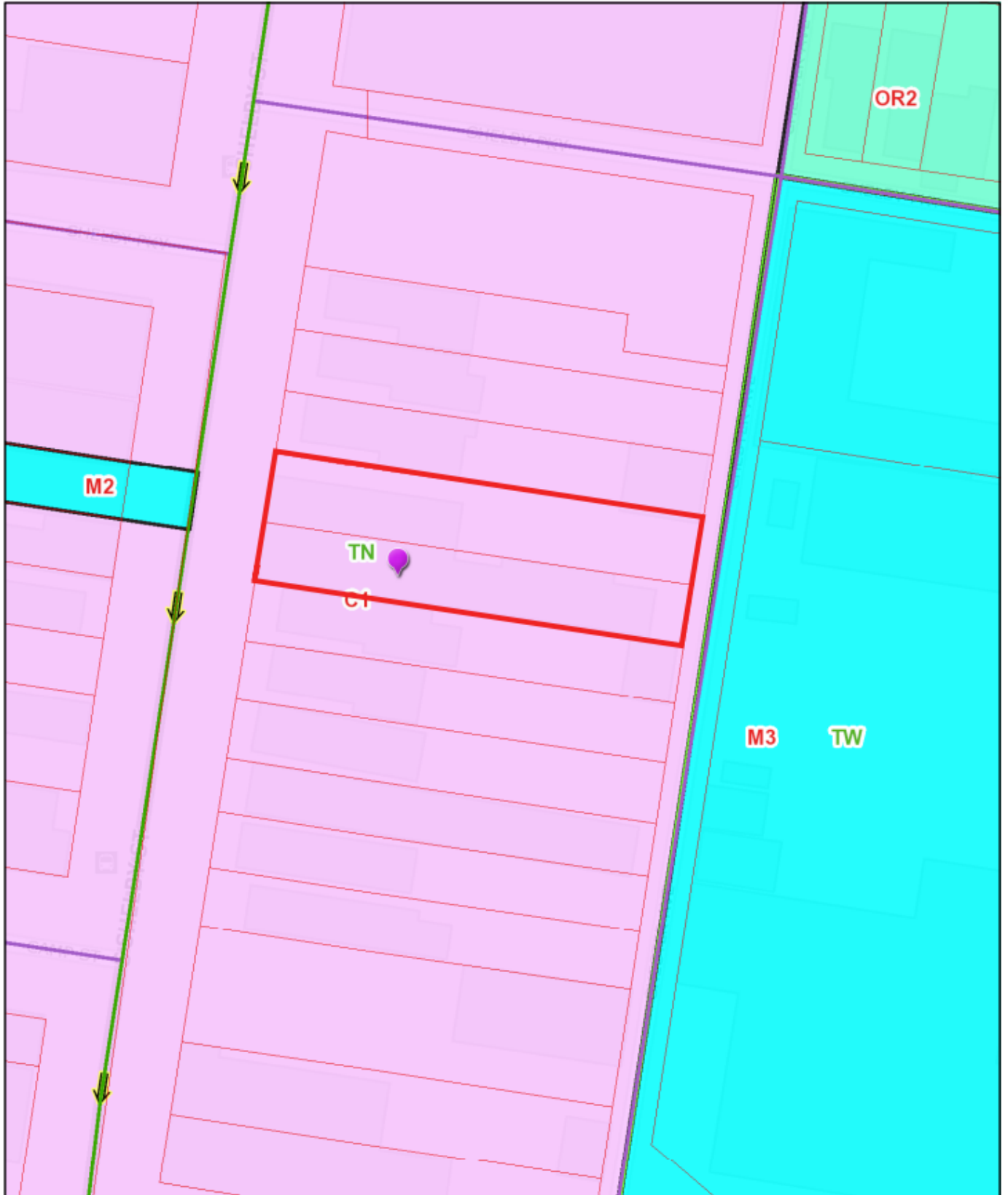
NOTIFICATION

Date	Purpose of Notice	Recipients
2/9/22	Hearing before LD&T on 2/24/22	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 6
3/4/22	Hearing before PC on 3/17/22	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 6
2/28/22	Hearing before PC	Sign Posting on property
	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Staff Plan 2040 Checklist
4. Proposed Binding Elements

1. Zoning Map



2. Aerial Photograph



3. Staff Plan 2040 Checklist

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

Traditional Neighborhood: Non-Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Community Form: Goal 1	6. Discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential.	✓	The proposed C-1 to C-2 zoning is not a non-residential expansion into a residential area.
2	Community Form: Goal 1	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	S Shelby Street is a transit corridor and the structure is located in an existing commercial corridor that has a mix of residential and non-residential uses.
3	Community Form: Goal 1	8. Encourage industries to locate in workplace Form Districts or in areas readily served by infrastructure and transportation facilities, including transit, rather than isolated industrial sites.	NA	The proposal is not for industrial development.
4	Community Form: Goal 1	15. When reviewing proposals for siting hazardous uses and uses with air, noise and light emissions, ensure disadvantaged populations are not disproportionately impacted.	NA	The proposal doesn't include hazardous uses.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
5	Community Form: Goal 1	16. Consider impacts on human health, quality of life and the environment including prevailing meteorological conditions and the potential to transport noxious odors, particulates and emissions when reviewing new developments and redevelopments. Special attention should be paid to air and water quality when residences, schools, parks or vulnerable populations will be impacted. Mitigate impacts to areas that are disproportionately affected.	✓	The proposed zone change from C-1 to C-2 will not affect air and water quality.
6	Community Form: Goal 1	17. Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	✓	The driveway off of S Shelby Street will be removed to improve the impacts of traffic from the site with pedestrians along the sidewalk of S Shelby Street. Driveways along this block are not common.
7	Community Form: Goal 1	18. Mitigate adverse impacts of noise from proposed development on existing communities.	✓	The proposal introduces a higher density commercial into a commercial area where much of the adjacent properties while zoned commercial are residential uses. The existing structure will buffer noise form adjacent properties.
8	Community Form: Goal 1	21. Require that industries which handle hazardous or flammable materials or are potentially offensive such as junkyards, landfills and quarries are sited to protect public health, safety and welfare and are located away from residential areas and population centers.	NA	The proposal is not for industrial development.
9	Community Form: Goal 2	1. Locate activity centers in appropriate areas in all Form Districts. Design and density should be compatible with desired form, adjacent uses, and existing and planned infrastructure.	✓	The zone change from C-1 to C-2 is located along a commercially zoned corridor. Changes to the site will be internal to the building and to rear of the site
10	Community Form: Goal 2	4. Allow non-residential development within the Neighborhood, Traditional Neighborhood and Village Form Districts to occur only at locations with appropriate access and connectivity.	✓	The proposal is located in the TNFD where there is appropriate access to the site off the Chester Avenue alley.
11	Community Form: Goal 2	5. Locate retail commercial development in activity centers where it can be demonstrated that sufficient population exists or is anticipated to support it.	✓	The proposal is located along an activity corridor where there is density in the area to support C-2 land uses.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
12	Community Form: Goal 2	6. Encourage a more compact development pattern in activity centers that result in efficient land use and cost-effective infrastructure investment.	✓	The proposal is located along an existing activity corridor where the site is an existing commercial use and proposed for another more intense commercial zone. Infrastructure exists in the area to serve commercial uses.
13	Community Form: Goal 2	7. Encourage activity centers to include a mixture of compatible land uses in order to reduce traffic congestion by requiring fewer trips, support and enhance alternative modes of travel, and encourage vitality and a sense of place.	✓	The proposal is located along an existing activity corridor where there is a mix of commercial, industrial, and residential uses.
14	Community Form: Goal 2	8. Encourage residential land uses in designated centers. Encourage residential and office uses above retail and other mixed-use multi-story retail buildings.	✓	There are commercially zoned residential uses adjacent to the site. The proposal is for C-2 zoning which allows for residential development and mixed use.
15	Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal is for the renovation of an existing structure for a mixed use.
16	Community Form: Goal 2	10. Encourage outlot development in underutilized parking lots of existing development to promote utilization of existing infrastructure provided specific criteria for elements such as location, scale, signs, parking, lighting, and landscaping are met. Outlot development shall encourage street-level retail with residential units above.	NA	The proposal is not an outlot on a large commercial site.
17	Community Form: Goal 2	11. Ensure appropriate placement, design and scale of centers in Traditional Neighborhood, Neighborhood and Village Form Districts to ensure compatibility with nearby residences.	✓	The proposal is located along an existing activity corridor where there is a mix of commercial, industrial, and residential uses. Changes to the site will be internal to the building and to rear of the site.
18	Community Form: Goal 3	9. Encourage development that respects the natural features of the site through sensitive site design, avoids substantial changes to the topography, and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	NA	There are no evident natural features on the site.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
19	Community Form: Goal 3	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	Soils are not an issue with the proposal.
20	Community Form: Goal 3	11. Encourage land uses within the Ohio River Corridor that are appropriate for and related to river corridor activities and that are consistent with the goals and objectives of the Ohio River Corridor Master Plan. Reserve appropriate riverfront sites such as the Upper River Road industrial area for river-related development. Allow development of commercial leisure businesses related to the river, such as boating services and restaurants in appropriate locations. Encourage new development in the Ohio River corridor and along key greenway and street connections to provide for public access in new riverfront development and to maintain views of the river from public rights-of-way.	NA	The proposal is not located along the Ohio River.
21	Community Form: Goal 3	12. When reviewing proposed developments consider changes to flood-prone areas and other features vulnerable to natural disasters such as sinkholes and landslides. Ensure appropriate measures to protect health, safety and welfare of future users of the development.	NA	There are no evident natural features on the site.
22	Community Form: Goal 4	1. Preserve buildings, sites, districts and landscapes that are recognized as having historic or architectural value and ensure that new land uses are compatible in height, massing, scale, architecture style and placement when located within the impact area of such resources.	✓	The proposal is for the renovation of an existing structure.
23	Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	The proposal is for the renovation of an existing structure.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
24	Mobility: Goal 1	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The site is located along transit corridor and along an existing activity corridor. A mix of land uses are nearby.
25	Mobility: Goal 2	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access to the site is from public rights of way in a mixed use area.
26	Mobility: Goal 3	1. Encourage a mix of complementary neighborhood serving businesses and services in neighborhood and village centers to encourage short trips easily made by walking or bicycling.	✓	The proposal is located in a mixed use commercially zoned area.
27	Mobility: Goal 3	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The site is located along transit corridor and along an existing activity corridor. A mix of land uses are nearby. Accessibility is improved with the removal of the driveway out to Shelby St.
28	Mobility: Goal 3	3. Evaluate developments for their ability to promote public transit and pedestrian use. Encourage higher density mixed-use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation and housing choices.	✓	S Shelby Street is a transit corridor. Pedestrian use is promoted with the removal of the driveway to S Shelby St. as access is available through the alley.
29	Mobility: Goal 3	4. Encourage development of walkable centers to connect different modes of travel. Siting of these multi-modal centers shall consider the effects of the following: 4.1. nodal connections identified by Move Louisville; 4.2. impact on freight routes; 4.3. time of operation of facilities; 4.4. safety; 4.5. appropriate linkages between neighborhoods and employment; and 4.6. the potential for reducing travel times and vehicle miles traveled.	✓	S Shelby Street is a transit corridor. Pedestrian use is promoted with the removal of the driveway to S Shelby St. as access is available through the alley.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
30	Mobility: Goal 3	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	S Shelby Street is a transit corridor. Pedestrian use is promoted with the removal of the driveway to S Shelby St. as access is available through the alley.
31	Mobility: Goal 3	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	Roadway improvements are not necessary with the proposal.
32	Mobility: Goal 3	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	Roadway improvements are not necessary with the proposal.
33	Mobility: Goal 3	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Roadway improvements are not necessary with the proposal.
34	Community Facilities: Goal 2	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	Existing utilities serve the site.
35	Community Facilities: Goal 2	2. Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	An adequate water supply is available.
36	Community Facilities: Goal 2	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD has preliminarily approved the proposal.
37	Economic Development: Goal 1	2. Encourage industries, to the extent possible, to locate in industrial subdivisions or adjacent to an existing industry to take advantage of special infrastructure needs.	NA	The proposal is not for industrial development.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
38	Economic Development: Goal 1	3. Locate commercial uses generating high volumes of traffic on a major arterial street, at the intersection of two minor arterials, or at a location with adequate access to a major arterial and at locations where nuisances and activities of the proposed use will not adversely affect adjacent areas.	✓	The proposal is not in an area where it will generate high volumes of traffic.
39	Economic Development: Goal 1	4. Utilize industrial sites near the airport and the Ohio River to support the growth and development of uses whose infrastructure and production needs require such a location or for land uses that support airport-oriented or river-oriented industrial uses.	NA	The proposal is not for industrial development.
40	Economic Development: Goal 1	5. Require industrial developments to locate with the appropriate transportation connectivity, near an arterial street or within existing industrial subdivisions.	NA	The proposal is not for industrial development.
41	Livability: Goal 1	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	Erosion will not be an issue with the proposal.
42	Livability: Goal 1	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	NA	The proposal is not located in a floodplain.
43	Livability: Goal 1	24. Ensure, to the extent feasible, that critical facilities and those that store or use hazardous wastes are located outside the regulatory floodplain. Where essential community facilities must be located within a floodplain (e.g., pumping stations), ensure that these facilities are designed, located and operated in a manner that minimizes loss of services during flood events as well as limits, to the extent possible, floodplain disturbance.	NA	The proposal does not involve hazardous uses and is not located in a floodplain.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
44	Housing: Goal 1	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	C-2 zoning allows for residential development.
45	Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	C-2 zoning allows for residential development. The proposal is located in a well connected neighborhood.
46	Housing: Goal 2	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	C-2 zoning allows for residential development. The proposal is located along a transit corridor.
47	Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	C-2 zoning allows for residential development. No existing residences will be displaced.
48	Housing: Goal 3	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	C-2 zoning allows for residential development.

4. Proposed Binding Elements

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. The existing vehicle access point Shelby Street is to be closed and the curb and sidewalk restored.

4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.
8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.